

**EXHIBIT “B”
(PLN2005-00151)**

Draft Density Bonus Ordinance Language

Article 21.8 – Density Bonus and Affordable Housing Incentives

Sec. 8-22180. Purpose and intent.

In accordance with Sections 65915, 65915.5, and 65917 of the California Government Code, this article is intended to provide incentives for the production of housing for very low, low income, and senior households and for the production of housing for moderate income households residing in condominium and planned development projects. In enacting this Article, it is also the intent of the City of Fremont to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the city's housing element.

Sec. 8-22181. Definitions.

Whenever the following terms are used in this article, they shall have the meaning established by this section:

Affordable ownership cost means monthly housing payments during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners insurance, property maintenance and repairs, a reasonable allowance for utilities, and homeowners association dues, if any, not exceeding the following:

(1) Moderate income units: One hundred ten percent of the area median income, adjusted for assumed household size based on unit size, multiplied by thirty-five percent and divided by twelve.

The assumed household size shall be one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom.

Affordable rent means monthly housing expenses, including all fees for housing services and a reasonable allowance for utilities, not exceeding the following:

(1) Very low income units: Fifty percent of the area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.

(2) Low income units: Sixty percent of the area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent and divided by twelve.

The assumed household size shall be 0.75 person in a single room occupancy unit, one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom.

Area median income means area median income for Alameda County as published pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

Child care facility means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

Condominium project means a housing development as defined in subdivision (f) of Section 1351 of the Civil Code, not including the conversion of existing rental apartments to condominiums.

Density bonus means a density increase over the otherwise allowable maximum residential density, as described in section 8-22182.

Density bonus housing agreement means a recorded agreement between a developer and the city as described in section 8-22189 of this article to ensure that the requirements of this article are satisfied. The agreement, among other things, shall establish the number of target units, their size, location, terms and conditions of affordability, and production schedule.

Density bonus units means those residential units granted pursuant to the provisions of this article which exceed the otherwise allowable maximum residential density for the development site.

Development standard means any site or construction condition that applies to a residential development pursuant to any ordinance, general plan element, specific plan, or other local condition, law, policy, resolution, or regulation. "Site and construction conditions" means standards that specify the physical development of a site and buildings on the site in a housing development.

Housing development means construction projects consisting of five or more residential units, including single family and multifamily units, for sale or for rent. For the purposes of this article, "housing development" also includes a subdivision, planned unit development, or condominium project consisting of five or more residential units or unimproved residential lots, the substantial rehabilitation and conversion of an existing commercial building to residential use, and the substantial rehabilitation of an existing multifamily dwelling, where the rehabilitation or conversion would create a net increase of at least five residential units.

Incentives or concessions means such regulatory concessions as listed in Section 8-22187.

Low income household means households whose income does not exceed the low income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

Maximum residential density means the maximum number of residential units permitted by the city's zoning ordinance on the date the application is deemed complete.

Moderate income household means households whose income does not exceed the moderate income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

Non-restricted unit means all units within a housing development excluding the target units.

Qualifying resident means senior citizens or other persons eligible to reside in a senior citizen housing development.

Planned development means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1 of the California Civil Code.

Senior citizen housing development means a housing development as defined in California Civil Code Section 51.3.

Target unit means a dwelling unit within a housing development which will be reserved for sale or rent to, and is made available at an affordable rent or affordable ownership cost to, very low, low, or moderate-income households, or is a unit in a senior citizen housing development.

Very low income household means households whose income does not exceed the very low income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

Sec. 8-22182. Calculation of Density Bonus and Number of Incentives and Concessions.

(a) Subject to the findings included in section 8-22188, the city shall grant a density bonus to a developer of a housing development who seeks a density bonus and agrees to construct at least one of the following:

(1) 10 percent of the total units of the housing development as target units affordable to low income households; or

(2) 5 percent of the total units of the housing development as target units affordable to very low income households; or

(3) A senior citizen housing development; or

(4) 10 percent of the total units of a newly constructed condominium project or planned development as target units affordable to moderate income households.

(b) In determining the number of density bonus units to be granted pursuant to subsection (a) of this section, the maximum residential density for the site shall be multiplied by 0.20 for subsections (1), (2), and (3) and 0.05 for subsection (4), unless a lesser number is selected by the developer.

(1) For each one percent increase above 10 percent in the percentage of units affordable to low income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent.

(2) For each one percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent.

(3) For each one percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by one percent up to a maximum of 35 percent.

When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

(c) The density bonus units shall not be included when determining the number of target units required to qualify for a density bonus. When calculating the required number of target units, any calculations resulting in fractional units shall be rounded to the next larger integer.

(d) The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection (a) above. Regardless of the number of target units, no housing development may be entitled to a density bonus of more than 35 percent.

(e) Subject to the findings included in section 8-22188, when a developer seeks a density bonus, the city shall grant incentives or concessions listed in section 8-22187 as follows:

(1) One incentive or concession for projects that include at least 10 percent of the total units for low income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(2) Two incentives or concessions for projects that include at least 20 percent of the total units for low income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.

(3) Three incentives or concessions for projects that include at least 30 percent of the total units for low income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.

(h) Each housing development is entitled to only one density bonus, which may be selected based on the percentage of either very low income target units, low income target units, or moderate income target units, or the project's status as a senior citizen housing development. Density bonuses from more than one category may not be combined.

(i) In accordance with state law, neither the granting of a concession or incentive nor the granting of a density bonus shall be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.

(k) The following tables summarize this information:

Density Bonus Summary Table

<i>Target Group</i>	<i>Minimum % Target Units</i>	<i>Bonus Granted</i>	<i>Additional Bonus for Each 1% Increase in Target Units</i>	<i>% Target Units Required for Maximum 35% Bonus</i>
Very Low Income	5%	20%	2.5%	11%
Low Income	10%	20%	1.5%	20%
Moderate Income (Condo or PD only)	10%	5%	1%	40%
Senior Citizen Housing Development	100%	20%	--	--

Incentives/Concessions Summary Table

<i>Target Group</i>	<i>Target Units</i>		
Very Low Income	5%	10%	15%
Low Income	10%	20%	30%
Moderate Income (Condo or PD only)	10%	20%	30%
Maximum Incentive(s)/Concession(s)	1	2	3
Note: A concession or incentive may be requested only if an application is also made for a density bonus, except for child care facilities pursuant to section 8-22184.			

Sec. 8-22183. Land Donation.

(a) When a developer of a housing development donates land to the city as provided for in this section, the developer shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this section, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density allowed by Section 8-22182, up to a maximum combined density bonus of 35 percent if a developer seeks both the increase required pursuant to this section and Section 8-22182. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

(b) A housing development shall be eligible for the density bonus described in this section if the city makes all of the following findings:

(1) The developer will donate and transfer the land no later than the date of approval of the final subdivision map, parcel map, or development application for the housing development.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development, or will permit construction of a greater percentage of units if proposed by the developer.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as very low income housing, and is now or at the time of construction will be served by adequate public facilities and infrastructure. The land also has the appropriate zoning and development standards to make the development of the very low income units feasible. No later than the date of approval of the final subdivision map, parcel map, or development application for the housing development, the transferred land will have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land.

(4) The transferred land and the very low income units constructed on the land will be subject to a deed restriction ensuring continued affordability of the units consistent with this article, which restriction will be recorded on the property at the time of dedication.

(5) The land will be transferred to the city, redevelopment agency, or to a housing developer approved by the city. The city reserves the right to require the developer to identify a developer of the very low income units and to require that the land be transferred to that developer.

(6) The transferred land is within the boundary of the proposed housing development. The transferred land may be located within one-quarter mile of the boundary of the proposed housing development provided that the city makes all of the findings included in section 8-22177(b).

Sec. 8-22184. Child Care Facilities.

(a) When a developer proposes to construct a housing development that includes target units as specified in section 8-22182(a) and includes a child care facility that will be located on the premises of, as part of, or adjacent to the housing development, the city shall grant either of the following if requested by the developer:

(1) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(b) A housing development shall be eligible for the density bonus or concession described in this section if the city makes all of the following findings:

(1) The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the target units are required to remain affordable pursuant to Section 8-22186 of this Article.

(2) Of the children who attend the child care facility, the percentage of children of very low income households, low income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are proposed to be affordable to very low income households, low income households, or moderate income households.

(c) Notwithstanding any requirement of this section, the city shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community already has adequate child care facilities.

Sec. 8-22185. Condominium Conversions.

(a) The city shall grant either a density bonus or other incentives of equivalent financial value if the applicant for a conversion of existing rental apartments to condominiums agrees to provide 33 percent of the total units of the proposed condominium project as target units affordable to low or moderate income households, or to provide 15 percent of the total units in the condominium conversion project as target units affordable to low income households. All such target units shall remain affordable for the period specified in section 8-22186(b).

(b) For purposes of this section, a "density bonus" means an increase in units of 25 percent over the number of apartments to be provided within the existing structure or structures proposed for conversion.

(c) No condominium conversion shall be eligible for a density bonus if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were previously provided pursuant to this article or Government Code section 65915.

Sec. 8-22186. Affordability and Development Standards.

(a) Target units shall be constructed concurrently with non-restricted units or pursuant to a schedule included in the density bonus housing agreement.

(b) Target units offered for rent to for low income and very low income households shall be made available for rent at an affordable rent and shall remain restricted and affordable to the designated income group for a minimum period of 30 years. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development. Target rental units will not meet the requirements for rental inclusionary units contained in Article 21.7 unless they remain restricted and affordable for 99 years pursuant to section 8-22176.

(c) Target units offered for sale to very low, low, or moderate income households in condominiums and planned developments shall be sold at an affordable ownership cost. The maximum resale price shall be the lower of: (1) fair market value or (2) the seller's initial purchase price, increased by the lesser of (A) the rate of increase of area median income during the seller's ownership or (B) the rate at which the consumer price index increased during the seller's ownership. The seller of the unit shall retain the market value at the time of sale of any capital improvements made by the seller, the down payment, and the seller's proportionate share of appreciation. Because this subsection limits the seller's appreciation, the seller's proportionate share of appreciation is 100 percent.

(d) Target units shall be built on site, unless off-site construction is approved in the city's discretion generally pursuant to Section 8-22177, and shall be dispersed within the housing development. The number of bedrooms of the target units shall be equivalent to the bedroom mix of the non-target units of the housing development, except that the developer may include a higher proportion of target units with more bedrooms. The design and appearance of the target units shall be compatible with the design of the total housing development. Housing developments shall comply with all applicable development standards, except those which may be modified as provided by this article.

(e) (1) Upon the request of the developer, the city shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of section 8-22182(a) that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through on-street parking.

Sec. 8-22187. Development Standards Modified as Incentive or Concession.

(a) Incentives or concessions that may be requested pursuant to section 8-22182(e) and section 8-22184(a) may include the following:

(1) A reduction of site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code and which result in identifiable, financially sufficient, and actual cost reductions, including, but not limited to:

- (A) Reduced minimum lot sizes and/or dimensions.
- (B) Reduced minimum lot setbacks.
- (C) Reduced minimum outdoor and/or private outdoor living area.
- (D) Increased maximum lot coverage.
- (E) Increased maximum building height and/or stories.
- (F) Reduced minimum building separation requirements.
- (G) Reduced street standards, such as reduced minimum street widths.

(2) Approval of mixed use zoning in conjunction with the housing development if non-residential land uses will reduce the cost of the housing development and if the city finds that the proposed non-residential uses are compatible with the housing development and with existing or planned development in the area where the proposed housing development will be located.

(3) Incentives for inclusionary units listed in section 8-22173(a).

(4) Modifications of those development standards included in section 8-22186(d).

(5) Off-site construction of target units, provided that the city makes all of the findings included in section 8-22177(b) (Off-Site Construction of Inclusionary Units).

(6) Deferred development impact fees (e.g., capital facilities, parkland in-lieu, park facilities, fire, or traffic impact fees).

(7) Other regulatory incentives or concessions proposed by the developer or the city which result in identifiable, financially sufficient, and actual cost reductions.

(b) Developers may seek a waiver or modification of development standards that will have the effect of precluding the construction of a housing development meeting the criteria of section 8-22182(a) at the densities or with the concessions or incentives permitted by this Article. The developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

Sec. 8-22188. Application requirements and review.

(a) An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this article shall be submitted with the first application for approval of a housing development and processed concurrently with all other applications required for the housing development. The application shall be submitted on a form prescribed by the city and shall include at least the following information:

(1) Site plan showing total number of units, number and location of target units, and number and location of proposed density bonus units.

(2) Level of affordability of target units and proposals for ensuring affordability.

(3) Description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards. For all incentives and concessions except mixed use development, the application shall include evidence that the requested

incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. For waivers or modifications of development standards, the application shall show that the waiver or modification is necessary to make the housing units economically feasible and that the development standards will have the effect of precluding the construction of a housing development meeting the criteria of section 8-22182(a) at the densities or with the concessions or incentives permitted by this Article.

(4) If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in section 8-22183(b) can be made.

(5) If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that each of the findings included in section 8-22184(b) can be made.

(b) An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this Article shall be considered by and acted upon by the approval body with authority to approve the housing development. Any decision regarding a density bonus, incentive, concession, waiver, modification, or revised parking standard may be appealed to the planning commission and from the planning commission to the city council. In accordance with state law, neither the granting of a concession, incentive, waiver, or modification nor the granting of a density bonus shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.

(c) Before approving an application for a density bonus, incentive, concession, waiver, or modification, the approval body shall make the following findings:

(1) If the density bonus is based all or in part on donation of land, the findings included in section 8-22183(b).

(2) If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, the findings included in section 8-22184(b).

(3) If the incentive or concession includes mixed use development, the finding included in section 8-22187(a)(2).

(4) If a waiver or modification is requested, the developer has shown that the waiver or modification is necessary to make the housing units economically feasible.

(d) If a request for a concession or incentive is otherwise consistent with this Article, the approval body may deny a concession or incentive if it makes a written finding, based upon substantial evidence, of either of the following:

(1) The concession or incentive is not required to provide for affordable rents or affordable ownership costs.

(2) The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.

(e) If a request for a waiver or modification is otherwise consistent with this article, the approval body may deny a concession or incentive only if it makes a written finding, based upon substantial evidence, of either of the following:

(1) The waiver or modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.

(2) The waiver or modification would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) If a density bonus or concession is based on the provision of child care facilities, the approval body may deny the bonus or concession if it finds, based on substantial evidence, that the city already has adequate child care facilities.

Sec. 8-22188. Density bonus housing agreement.

(a) Developers requesting a density bonus shall agree to enter into a density bonus housing agreement with the city. A density bonus housing agreement shall be made a condition of the discretionary planning permits for all housing developments pursuant to this article and shall be recorded as a restriction on any parcels on which the target units or density bonus units will be constructed.

(b) The density bonus housing agreement shall be recorded prior to final or parcel map approval, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The density bonus housing agreement shall run with the land and bind on all future owners and successors in interest.

(c) The density bonus housing agreement shall include but not be limited to the following:

(1) The total number of units approved for the housing development, the number, location, and level of affordability of target units, and the number of density bonus units.

(2) Standards for determining affordable rent or affordable ownership cost for the target units.

(3) The location, unit size in square feet, and number of bedrooms of target units.

(4) Provisions to ensure affordability in accordance with sections 8-22186(b) and (c) of this article.

(5) A schedule for completion and occupancy of target units in relation to construction of non-restricted units.

(6) A description of any incentives, concessions, waivers, or reductions being provided by the city.

(7) A description of remedies for breach of the agreement by either party. The city may identify tenants or qualified purchasers as third party beneficiaries under the agreement.

(8) Procedures for qualifying tenants and prospective purchasers of target units.

(9) Other provisions to ensure implementation and compliance with this Article.

(d) In the case of for-sale housing developments, the density bonus housing agreement shall include the following conditions governing the sale and use of target units during the applicable use restriction period:

(1) Target units shall be owner-occupied by eligible very low, low, or moderate income households, or by qualified residents in the case of senior citizen housing developments.

(2) The purchaser of each target unit shall execute an instrument approved by the city and to be recorded against the parcel including such provisions as the city may require to ensure continued compliance with this article.

(e) In the case of rental housing developments, the density bonus housing agreement shall provide for the following:

(1) Procedures for establishing affordable rent, filling vacancies, and maintaining target units for eligible tenants;

(2) Provisions requiring verification of household incomes.

(3) Provisions requiring maintenance of records to demonstrate compliance with this sub-section.

(f) Density bonus housing agreements for child care facilities and land dedication shall ensure continued compliance with all conditions included in section 8-22184 and 2-22183, respectively.